

## **JUDGES ORDER STEPS TO LIMIT INMATES**

### **SPECIAL PANEL TO ADDRESS PROBLEMS EARLY RELEASES WORRY SOME**

By Brandon Bailey and Steve Harmon  
San Jose Mercury News  
Page 1A  
July 24, 2007

Frustrated with California's failure to ease overcrowding in its jam-packed prisons, a pair of federal judges took the unprecedented step Monday of ordering a special panel to consider capping the inmate population -- or even ordering early release of some prisoners.

The prospect of early releases drew howls of outrage from politicians and public safety advocates. Gov. Arnold Schwarzenegger, who has already seen the courts take control of some prison programs, promised to appeal the rulings while he implements a package of prison expansion and reform measures he developed with state lawmakers earlier this year. State officials and a leading prison-rights attorney, meanwhile, expressed hope that both sides can reach agreement on new reforms before the federal panel takes any drastic steps.

Such reforms -- if they are to satisfy the judges -- would most likely have to reduce the number of people in prison by making significant changes in the justice system such as new parole or sentencing policies.

The two judges ruled Monday in separate but related cases. U.S. District Judge Lawrence Karlton of Sacramento is presiding over a long-running class-action suit that argues inmates are receiving dismal mental health care. U.S. District Judge Thelton Henderson of San Francisco is reviewing a similar case regarding medical care. Both judges said they decided to establish the special panel because California has repeatedly failed to provide adequate care for its prisoners.

"That failure appears to be directly attributable to overcrowding," Karlton wrote.

The state spends more than \$1 billion a year on a system that now houses more than 172,000 inmates in a network of prisons originally designed to hold around 100,000.

"There is no doubt that prisons in California are seriously and dangerously overcrowded," Karlton continued, adding that, "some form of limitation on the inmate population must be considered."

At the request of inmates' attorneys, Karlton and Henderson agreed to invoke a 1996 federal law

that sets a procedure for federal courts to impose limits on state or local inmate populations.

#### Concerns about outcome

Under the law, which is intended to keep any single judge from having too much power over a prison system, the chief judge of the 9th U.S. Circuit Court of Appeals must now appoint a panel of three judges to consider whether to cap the population -- either by ordering early releases or by other means.

The law has been invoked in other states, but never on a scale as large as California's sprawling prison system. What comes next will be watched closely by legal experts and prison officials around the nation.

The prospect of judges making such basic decisions about the operation of state prisons left many of the state's political leaders voicing dismay.

A leading Democratic legislator called the rulings "unwelcome" but also blamed the Republican governor for allowing things to get to this stage.

Rather than appealing the decision, Schwarzenegger should put a new priority on reforming sentencing and parole standards, said state Sen. Gloria Romero, D-Los Angeles, who chairs the Senate Public Safety Committee.

"This is an opportunity for us to strip away the hysteria," she said, "and deal with public safety rationally."

Republicans meanwhile assailed the rulings as irresponsible and extreme, saying they could lead to the release of violent criminals.

That places "the safety and security of every Californian at risk," said Assembly Minority Leader Mike Villines, R-Fresno, "and paves the way for the early release of thousands of dangerous criminals into neighborhoods across the state."

Both Karlton and Henderson, who previously ordered a receiver to take over the prison medical system, said they were acting in frustration over California's failure to provide basic humane treatment for inmates.

Referring to state officials, Henderson cited "five years of complete and utter failure by the defendants to cure the constitutional deficiencies in their delivery of medical health care to prisoners."

#### State actions

While the judges are clearly frustrated, inmates' attorney Michael Bien said he believes the state can head off the panel by implementing a series of recommendations from a group of experts that recently studied the problem.

As an example, the experts urged the state to provide more support for parolees and alternative programs for those who commit minor violations, rather than sending them back to prison in every case. Thousands of people are returned to state prisons every year under these circumstances, Bien said, although state officials say they already have modified its policy on some technical violations.

Administration officials, while not commenting on specifics, indicated they hope to convince the courts that a series of new measures will ease the overcrowding crisis -- including the creation of several thousand new beds, transferring some prisoners to out-of-state facilities and developing new criteria for handling parole violators.

"I'm confident that the steps the state has taken and will continue taking to reduce overcrowding will meet the court's concerns," Schwarzenegger said in a written statement. "At the same time, we intend to appeal these orders to ensure that dangerous criminals are not released into our communities."

But the issue may be a matter of timing. In their rulings Monday, the two judges expressed doubt that the administration can enact its plans soon enough to make a difference in current prison conditions.

"All federal courts would prefer that the states take measures on their own, rather than being forced to do them," Bien said. "The question is when is the administration ever going to act."

**WHAT'S NEXT:** Monday's rulings ordered that a three-judge federal panel be appointed to consider measures reducing prison population. Gov. Arnold Schwarzenegger said he will appeal the rulings and attempt to implement prison reforms before any such panel can take drastic steps. **WHY IT WILL BE WATCHED CLOSELY:** The procedure for federal limits on state or local inmate populations has been imposed in other states but never on such a large scale as in this case.